Charter. As for the third submission, there is absolutely no evidence to suggest the plaintiff's motive is anything but bona fide. In any case, if the plaintiff has a right to be informed, it does not matter what her motive is in seeking the information so long as it is not for an illegitimate purpose. In my view, whether or not the applicant is entitled by law to a certified copy of an extract from the defunct Register in order to obtain the identities of her natural parents, is determined by the scope of the relevant provisions of the Adoption Act and in particular s 12 thereof and not to what state counsel considers to be the policy reasons behind the new provisions. Section 12(6) provides that no person shall be permitted to inspect any such original or former entry or to take a copy thereof unless that person has certified and the Registrar-General is satisfied that the particulars recorded in the original or former entry are material for the purpose for which the inspection is required. Neither the materiality nor the purpose is defined in s 12(6). The Registrar-General rejected the application of the plaintiff solely on the ground that she was an adopted child. In my view, that was clearly not a proper ground for refusing the request. Under s 12(6), the Registrar-General needs only to be satisfied that the particulars recorded in the original entry are material for the purpose for which the inspection is required. Since s 12(6) does not prescribe the purpose for which the inspection is required, any legitimate purpose must suffice. Here the plaintiff requires inspection for the purpose of finding out who her natural parents are. That is a legitimate purpose. Therefore, I cannot see how the Registrar-General was in a position to say that the original entry was not material for the purpose for which the inspection was required.

In my view, the Registrar-General has misconstrued his duty under s 12(6) and has reached the wrong decision. Accordingly, I will make an order in terms of the application. However, to enable the defendants to apply for a stay of this order should they decide to appeal against my decision, I direct that this order should lie in the Registry for a period of seven days from today.

Application granted.

Solicitors: *Hoh & Mas.*

Reported by *Terence Tan Bian Chye*

Re Mechanised Construction Pte Ltd

HIGH COURT (SINGAPORE) – COMPANIES WINDING-UP NO 786 OF 1986
CHAO HICK TIN JC
27 APRIL 1989

Company Law – Winding-up petition – Grounds for winding-up – Failure to pay statutory demand – Dispute over amount owed – Whether petitioning creditor liable for damages – Part of statutory demand sum claimed not in dispute – Whether debtor's failure to pay this part was sufficient grounds for winding-up – Companies Act (Cap 50, 1985 Ed), s 254(2)(a) – UK Companies Act 1985, s 233(a) – UK Companies Act 1856, s 68(1)

The present winding-up proceedings to wind up the debtor company ('the company') were started by company H, but later, by order of court, H was given leave to withdraw its winding-up petition and in its place, B was granted leave to be substituted as petitioning creditor. The ground upon which B sought to rely to wind up the company was that the latter had neglected to pay or satisfy a statutory letter of demand. The amount claimed in the letter of demand was allegedly due from the company to B under a sale contract whereby B agreed to supply and install steelworks required for a building contract in which the company was a sub-contractor. After the works had been completed, B wrote to the company to demand payment. The company alleged that B had completed the work late, and the former had thus incurred additional expenses. The company also contended that payment could not be made until the actual structural steelworks had been measured and calculated by a quantity surveyor. B replied that the site for the steelworks were to be made available to them by a certain date but was only made available much later. In view of this non-compliance by the company in making available the site, the original timeframe for completion was no longer applicable and B was only required to complete the steelworks within a reasonable time. The amount claimed by the company as additional expenses was also declared to be excessive. B also disputed the claim that the steelworks had to be measured by the quantity surveyor. In the alternative, B contended that even if the amount claimed by the company as additional expenses was correct, there was still an amount which was indisputably due from the company to B.

Held, dismissing the petition:

(1) The first point of dispute regarding the date for completion of the steelworks by B raised questions of fact and law which ought to be thrashed out at trial.

(2) As regards the issue whether the steelworks had to be measured by a quantity surveyor, while the contract did not provide that this had to be so, this obviously would have to be so unless the parties could, among themselves, agree on the quantity. This was a question of fact.

(3) Considering all the circumstances, the proper course would be for B to commence an action to establish the debt due rather than a winding-up petition.

(4) It is a well-established principle that a winding-up petition is not a legitimate means of seeking to enforce payment of a debt which is bona fide disputed. It is an abuse of the process of the court to petition to wind up a company upon the basis of a debt which is bona fide disputed.

(5) As regards B's alternative argument, B was not entitled to use the statutory demand process section. The section contemplated a creditor being able to point to a debt of a specified

sum that cannot be seriously questioned either as to existence or quantum.

(6) In the present case, on the date of the statutory demand, there was a clear dispute between the parties as to the amount of damages due from B to the company for delay in completion. Also, the final measurement of the steelworks had yet to be carried out.

(7) Having regard to all the circumstances, B should not have filed the winding-up petition. The substituted petition was therefore dismissed with fixed costs at $2,500.

Cases referred to

1 *Stonegate Securities Ltd* v *Gregory* [1980] 1 All ER 241 (folld)
2 *Mann* v *Goldstein* [1968] 1 WLR 1091 (folld)
3 *In re London and Paris Banking Corpn* (1874) LR 19 Eq 444 (folld)
4 *Re a company* [1984] 3 All ER 78 (folld)
5 *Cardiff Preserved Coal and Coke Co* v *Norton* (1867) LR 2 Ch App 405 (distd)

Legislation referred to

Companies Act (Cap 50, 1985 Ed) s 254(2)(a)
Companies Act 1985 [UK] s 233(a)
Companies Act 1856 [UK] s 68(1)

DA Mitchell for the petitioning creditor.
Kelvin Lim for the company.

Cur Adv Vult

Chao Hick Tin JC: These winding-up proceedings were first initiated by Haller (Far East) Pte Ltd on 22 November 1986 on the ground that the debtor company, Mechanised Construction Pte Ltd, owed Haller a sum of $64,297.96. The petition of Haller was based on neglect by the company to pay up the sum demanded within three weeks of the issue of the statutory notice. On 17 November 1987, by an order of court, Haller was given leave to withdraw its petition and in its place, Boustead Services Pte Ltd ('Boustead') was granted leave to be substituted as the petitioning creditor. The substituted petition was filed on 22 December 1987. The ground upon which the substituted petitioner sought to rely to wind up the company was that the latter neglected to pay or satisfy a statutory notice of demand dated 20 January 1987 for a sum of $141,036.79.

The sum of $141,036.79 was alleged to be due from the company to Boustead under a sale contract dated 30 June 1985 whereby Boustead agreed to supply, fabricate and install structural steelworks of an estimated total weight of 201 metric tonnes at the rate of $1,490 per tonne, making an estimated total of $299,490. These materials and services were required in connection with the Katong Convent Secondary School project, in which the company was a sub-contractor. Under the contract the time for completing the works was to be 'four to five months from confirmation of order and on condition that the site is available to (Boustead) within two weeks after confirmation of order'. Payment was to be made by 'monthly progressive at 30 days upon invoicing'. On 5 July 1985, in accepting the offer from Boustead, the company stated that it agreed and accepted 'the sales contract for a total lump sum price of $299,490 subject to final quantity'. The site was only made available to Boustead on 10 August 1985.

The company alleged that the progress of work undertaken by Boustead 'was extremely slow'. The company asserted that the original completion date should have been 10 January 1986 (five months from 10 August 1985). On 8 November 1985, Boustead submitted a revised programme to the company to complete the works by 7 April 1986. The company indicated that, without prejudice to its rights, it agreed to the revised programme. Thereafter, the progress of the work still appeared to be slow, so much so that on 3 March 1986, the company reminded Boustead that their delay had caused delay to other works relating to 'roof tile installation and subsequent windows plastering, screwing and ceiling below the roofs'. In their reply of 5 March 1986, Boustead admitted that 'the rate of progress at the site prior to the beginning of this year (was) unfortunately slow' but added that 'efforts (had) been made since to speed up the work both at site and in our workshop'. Boustead also said that 'this rate of progress will be difficult to maintain if progressive payment due to us is not forthcoming'.

Thereafter works would appear to remain slow as the company alleged that by April 1986, only about 35 tonnes of trusses had been installed and that by 26 April 1986, the company had paid $60,000 to Boustead, more than what was due to Boustead. That sum was said to be equivalent to payment for 40 tonnes of installed trusses. The minutes of a site meeting on 18 April 1986 recorded that 'there are presently 40 trusses yet to be laid in order that the entire roofing might be finished on time'. On 19 May 1986, Boustead was warned by the company to complete the works by 15 June 1986, failing which the company would terminate the contract for 'breaching the time frame and (would) continue the remaining work on (its) own' so that the school project would not be jeopardized. The company ceased to make any payment to Boustead since May 1986. The entire works were not completed until 26 August 1986, a delay of four months and 20 days counting from the date on which the works should have been completed in accordance with the revised programme.

I would also set out the following events subsequent to the date of completion of the works on 26 August 1986:

27 August 1986:
Boustead wrote to the company to say that it had completed all the works and demanded payment for the sum of $175,832.26.

5 September 1986:
The company replied to say that the claim was not acceptable and said that 'since 20 June 1986, we have continued your remaining works with our own men and machineries to complete your contractual work on 26 August 1986 due to the absence of your workforce on site. We are unable to calculate the cost incurred and suffered by us due to your long delay and absence of manpower until the whole project is completed and handed over to the employer'.
16 September 1986:
Boustead wrote to dispute that their workforce was not present to undertake the works except in one instance – 'the exception is frames TRC-1 and TRC-5 in drawing R4-1 which you had revised and decided to carry out supply, fabrications and installations yourself.' Boustead suggested a meeting to resolve their dispute.
24 October 1986:
A meeting was held between the parties.
12 November 1986:
Boustead wrote to say that following the meeting and their examination of the claims raised by the company, Boustead would reduce their invoiced claim of $175,832.26 by $30,443.50.
22 November 1986:
Haller filed the original petition to wind up the company.
12 December 1986:
Boustead sent a reminder to the company to pay up the sum of $141,036.79 within seven days failing which Boustead 'will be compelled to take appropriate action for recovery' of the amount due. The sum was arrived at as follows:

Total value of work done	$256,480.29
Less: Due to company for various claims as proposed by Boustead	$ 30,443.50
	$226,036.79
Less: Payments made	$ 85,000.00
Balance due to Boustead:	$141,036.79

20 Jan 1987:
Boustead, through their solicitors, issued the statutory notice of demand.

The company alleged that in view of the delay in completion by Boustead, it had incurred additional expenses in the sum of $78,125 in respect of certain preliminary items. Boustead did not deny the delay but was only prepared to bear a very much lesser amount. As stated above, the contract was subject to final quantity. The company contended that the actual structural steelworks fabricated and installed had to be measured and calculated by the quantity surveyor of the project before the final amount could be ascertained. This final measurement by the quantity surveyor was not completed until January 1988 and it showed that the total steelworks undertaken were only 166.171 tonnes. In other words, two areas of dispute were raised by the company to the balanced amount of $141,036.79 claimed by Boustead – first, the damages claimed by the company against Boustead on account of the delay; and second, at the time the statutory notice was issued, final measurement by a quantity surveyor had yet to be undertaken.

The response of Boustead to these two points was essentially as follows:

(i) the site was to be made available to Boustead within two weeks of 5 July 1985. It was not made available until 10 August 1985. In view of this non-compliance by the company, the time-frame of five months specified in the contract was no longer applicable. Accordingly, Boustead was only required to complete the works within a reasonable time. The amount claimed by the company as additional expenses were excessive and unreasonable.

(ii) The company was informed of the final amount due to Boustead under the contract through Boustead's letter of 27 August 1986. Boustead should not have to wait nor were they bound by the final measurement made by the quantity surveyor. It was not necessary that a measurement must be carried out by a quantity surveyor.

In the alternative, Boustead contended that even if it be assumed that the claim for additional expenses of $78,125 were correct, and even taking into consideration the adjustment that needed to be made to the amount claimed based on the final measurement carried out by the quantity surveyor, there was still an amount of $58,676.29 which was indisputably due from the company to Boustead, computed as follows:

Particulars	
Value of works in accordance with measurement of quantity surveyor	$247,594.79
Less previous payments	$ 85,000.00
	$162,594.79
Less company's allowable deductions which were denied	
(1) Payment to sub-contractors	$ 19,520.00
(2) Test charges	$ 3,857.50
(3) Generator sets	$ 1,686.00
(4) Supply of diesel	$ 730.00
(5) 5 months of preliminary expenses	$ 78,125.00
	$ 58,676.29

On the foregoing it seemed to me quite clear that the amount of $141,036.79 claimed by Boustead against the company was seriously disputed. On the facts, both the points of dispute raised were not without some basis. The first point of dispute clearly raised questions of fact and of law which ought to have been thrashed out at a trial.

For example, in view of the three-week delay in giving site to Boustead, when should Boustead have finished the works? Were they bound by the five-month period? What consequences flowed from the delay by Boustead in completing the works? As regards the second point, while the contract did not provide that the measurement must be done by a surveyor, this obviously would have to be so unless the parties could, among themselves, agree on the quantity. This was a question of fact. Considering all the circumstances, the proper course would be for Boustead to commence an action to establish the debt due rather than a winding-up petition.

It is a well established principle that a winding-up petition is not a legitimate means of seeking to enforce payment of a debt which is bona fide disputed: see *Stonegate Securities Ltd* v *Gregory*[1] at p 243. It is an abuse of the process of the court to petition to wind up a company upon the basis of a debt which is so bona fide disputed: see judgment of Ungoed-Thomas J in *Mann* v *Goldstein*[2] at pp 1098-9. This substituted petition was presented on the basis of neglect on the part of the company to pay the amount claimed in the statutory notice. But there could not be neglect to pay if the sum demanded was bona fide disputed. As Jessel MR stated in *In re London & Paris Banking Corpn*[3] at p 446:

> Negligence is a term which is well known to the law. Negligence in paying a debt on demand, as I understand it, is omitting to pay without reasonable excuse. Mere omission by itself does not amount to negligence. Therefore, I should hold, upon the words of the statute, that where a debt is bona fide disputed by the debtor, and the debtor alleges, for example, that the demand for goods sold and delivered is excessive, and says that he, the debtor, is willing to pay such sum as he is either advised by competent valuers to pay, or as he himself considers a fair sum for the goods, then in that case he has not neglected to pay and is not within the wording of the statute.

As regards the alternative ground, counsel for the substituted petitioner argued that even if the two points of dispute raised by the company were valid, there was nevertheless outstanding the sum of $58,626.29 which was indisputably due from the company and failure so to pay that sum constituted 'neglect to pay' within the meaning of s 254(2)(a) of the Companies Act. During the hearing before me, counsel for the company stated that if $58,626.29 was all that Boustead were asking, the company was prepared to pay that sum. In this regard, it is pertinent to refer to the case *Re a Company*.[4] There the petition was founded on a statutory demand dated 1 July 1982 in the sum of £12,435.75 which sum related to some muck and soil removal work done by the petitioners for the company. The petitioners submitted an invoice for £12,435.75. In April 1980, the company wrote disputing the rate charged. The rate specified in the contract was for the spoil to be taken to Elstow Tip, not Wentworth Drive, which was much nearer. Having received no reply, the company suggested that the sum payable to the petitioners was £2,230.38 and was prepared to pay that sum, if the petitioners would agree. Then in September 1980, the petitioners wrote to say that they would be taking professional advice on the comments made by the company on the invoice. The next letter was the statutory demand dated 1 July 1982 from the petitioners' solicitor. The statutory notice was not complied with and the petition was presented on 2 August 1982. On 17 September 1982, the company by a motion sought to have the petition dismissed. A week later on 24 September 1982, the company paid the petitioner £2,234.38 and said that in consequence it no longer owed the petitioners any money. One of the submissions made by the petitioners was that when this statutory demand was issued it was apparent that some sum exceeding the statutory minimum of £200 was owing, ie £2,234.38, and that non-payment of that sum within 21 days was sufficient neglect within s 223(a) of the English Companies Act. Merryn Davies J referred to the well-known passage of Lord Chelmford LC in *Cardiff Preserved Coal and Coke Co* v *Norton*[5] at p 410 where it was held that even though the notice demanded a larger sum but if a smaller sum (exceeding the statutory minimum) was indisputably due and known to the company, and the company nevertheless failed to pay up the smaller sum, then there was neglect to pay on the part of the company within the meaning of s 68(1) of the English Companies Act 1856. Merryn Davies J distinguished the case before him from *Cardiff Preserved Coal* in this way (at p 82):

> When the demand was made, the amount due to the petitioners was not known to the company. It is still not known. At the time of the demand the company knew there was a dispute and were willing to pay £2,234.38 but that is not to say that they knew that the sum due was £2,234.38. They knew that the petitioners were alleging the sum due to be £12,435.75. As to the petitioners, they knew that the company were disputing liability in that sum. In these circumstances I do not see how the petitioners were in any position to make a genuine demand for a specified sum. Section 223(a) contemplates a creditor being able to point to a debt of a specified sum that cannot be seriously questioned either as to existence or quantum. It follows that the petitioners were not at liberty to make use of s 223(a). The position is no doubt otherwise when a petitioner can, without serious argument, allege a debt of a specified sum but by inadvertence specifies the sum wrongly in a statutory demand.

In the instant case, as stated above, the company was seriously disputing the claim for $141,036.79. The crucial date to determine whether the sum of $58,626.29 was indisputably due was the date on which the statutory notice was issued, ie 20 January 1987. On that date there was clearly a dispute between the parties on the question of damages that were due from Boustead to the company for the delay in completing the works. Similarly on that date, the final measurement of the works had yet to be carried out by the parties or, in the absence of agreement,

by a quantity surveyor. Having regard to all the circumstances and on the authority of *Re a Company*,[4] all the more so I did not see how one could say that the company clearly knew that the sum due to the petitioners was $58,626.29 and that since they did not pay that sum, there was neglect to pay within s 254(a) of the Companies Act.

For the above reasons, I did not think, in the light of the dispute between the parties on the sum claimed by Boustead, that a filing of a winding-up petition was a proper course to pursue. An action should have been instituted to establish the amount due from the company to Boustead. Accordingly, I dismissed this substituted petition and fixed costs at $2,500.

Order accordingly.

Solicitors: *Donaldson & Burkinshaw*; *Tan, Lee & Choo.*

Reported by *Terence Tan Bian Chye*

The Brightside Mechanical and Electrical Services Group Ltd & Anor v Standard Chartered Bank & Anor

HIGH COURT (SINGAPORE) – MOTION IN SUIT NO 373 OF 1988
CHAN SEK KEONG J
26 APRIL 1989

Banking – Performance bond – Whether performance guarantee required – Guarantee extended under protest – Whether guarantee invalidated on the ground of mistake, duress or lack of consideration – Allegation that demand for payment was fraudulent – Standard of proof for fraud – Demand to comply with terms of guarantee – Requirement for beneficiary to determine that there was a breach of contract – Beneficiary's demand referring to belief – Whether 'belief' equivalent to 'determination'

Civil Procedure – Interlocutory injunction – Balance of convenience – Whether mere hardship to plaintiff sufficient to warrant injunction

Contract – Building contract – Contract requiring performance guarantee – Whether guarantee had to be provided during defects liability period

The second defendants were the main contractors of a development. Another company was subcontractor for part of the development. This company had a duty to provide a performance bond which they did through the first defendants in the form of a bankers' guarantee. Later, the first plaintiffs replaced this company as subcontractors. A new performance guarantee was issued by the first defendants in favour of the second defendants. After its initial expiry, the guarantee was extended for ten further periods of varying durations. The first five extensions were made without dispute between the parties. When the second defendants requested the sixth extension, the first plaintiffs objected on the ground that the subcontract works for which they were responsible would have been substantially completed by the end of the fifth extension. The second defendants were of the view that the first plaintiffs had contractual obligations to perform even after the date of practical completion, namely, a duty to remedy defects during the defects liability period. After the second defendants threatened legal action, the second defendants extended the guarantee. Further extensions were later made. Finally, when an eleventh extension was requested, the first plaintiffs took a firm stand and refused to do so. The second defendants made a demand on the first defendants for payment under the performance guarantee. The first plaintiffs rejected this and started the present proceedings and claimed against the second defendants, inter alia, a declaration that the first plaintiffs were under no obligation to provide extensions of the performance guarantees and a declaration that any demand made by the second defendants on the first defendants on the ground of the first plaintiffs' failure to extend the guarantee was unjustified. The first plaintiffs obtained, on the same day, an ex parte injunction restraining the first defendants from paying the second defendants under the demand and debiting the first plaintiffs' account. Later, the first plaintiffs added the second defendants as a party to the proceeding. Their statement of claim was also amended to include a claim against the second defendants for a declaration that the last extension of the performance guarantee was void and the demand of the first defendants was not valid and injunctive relief. The first plaintiffs made a motion for two applications, namely, to continue the interim injunction until the trial of the action, and to restrain the first defendants from paying the sum demanded from the second defendants under the performance guarantee. The first plaintiffs argued that their obligation to provide the performance guarantee ceased before the last extension, and that the last extension was void as it was procured under duress or under a mistake or procured without consideration. It was also claimed that the demand made by the second defendants was void because the extension of the guarantee itself was void, and the demand itself was fraudulent.

Held, dismissing the applications:

(1) On a construction of the words of the subcontract, it would appear that the performance guarantee only had to be provided up to the completion of the subcontract works and not during the defects liability period. If the parties wanted to cover this latter period, a reduction in the amount of the security to be provided would be expected. There was some doubt therefore as to the extent of the plaintiffs' obligations to provide the performance guarantee.

(2) In view of the court's findings on the balance of convenience, it was unnecessary to decide whether the first plaintiffs' claim that the last extension was void had a real prospect of succeeding at the trial.

(3) If the plaintiffs' submissions on the construction of the contract provisions was correct, their next argument was that the eleventh extension was null and void. Assuming that this was a triable issue, the plaintiffs still have to persuade the court that they would suffer irreparable harm if the interlocutory injunction was not granted.

(4) The first plaintiffs have not produced sufficient evidence to persuade the court that the second defendants would not be in a position to repay the sum in dispute if the first plaintiffs were to succeed at the trial. The first plaintiffs' plea is one of hardship and injustice. But on the authorities, the test is not mere hardship to the first plaintiffs but irreparable harm to them.